

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

**Linda Lancon,

Debtor.**

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Case No. 00-07759-6B7

MEMORANDUM OPINION

At Orlando, in said District on January 10, 2001, before Arthur B. Briskman, Bankruptcy Judge.

This matter came on the Motion by the Trustee for Turnover of Property of the Estate. Appearing were Patricia Daugherty, attorney for the Debtor, Linda Lancon; and John Meininger, III, attorney for the Trustee. After reviewing the pleadings and evidence, and hearing live testimony and arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Linda Lancon ("Debtor") and Francis Lancon were married on January 5, 1995. Francis Lancon had received \$110,000.00 ("the funds") from a federal forfeiture case on September 2, 1994, prior to his marriage to the Debtor. The funds were held in various forms with different account holders, including Francis Lancon or Linda A. Lancon, ITF Brenda Lynn Lancon; Linda A. Lancon, ITF Chris Lancon and Brenda Lancon. The funds were initially held solely in the name of Francis Lancon until Mr. Lancon's incarceration. The funds were put into the Debtor's name, upon Mr. Lancon's incarceration, to hold in trust for Mr. Lancon while he was incarcerated.

Debtor filed for relief under Chapter 7 of the United States Bankruptcy Code on October 2, 2000. The Debtor was holding the funds for Francis Lancon, her non-debtor spouse, at the time she filed for bankruptcy relief. The evidence established the Debtor was holding the funds in trust for her spouse, while he was incarcerated. The Debtor did not use the funds for her own use and never intended to maintain an ownership interest. The Debtor only acted as a trustee, holding the funds in trust for her husband while he is incarcerated.

CONCLUSIONS OF LAW

Section 541(d) of the Bankruptcy Code provides:

Property in which the debtor holds...only legal title, but not an equitable interest...becomes property of the estate...only to the extent of the debtor's legal title to such property, but to the extent of any equitable interest in such property that the debtor does not hold. 11 U.S.C. §541(d).

Section 541(d) requires property held in trust by the debtor at the time of filing a bankruptcy petition is excluded from the bankruptcy estate. *In re B.I. Financial Services Group, Inc.*, 854 F.2d 351, 354 (9th Cir. 1988) (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205n. 10, 103 S.Ct. 2309, 2314 n. 10, 76 L.Ed.2d 515 (1983)). “[T]he bankruptcy court’s jurisdiction over debtor’s property extends only as far as debtor’s interest in the property.” 4 Collier on Bankruptcy ¶ 541.11 (Lawrence P. King et al. eds., 15th ed. 2000) (quoting *In re Marrs-Winn Co.*, 103 F.3d 584 (7th Cir. 1996) (finding creation of an express trust)). When property of the estate is alleged to be held in trust, the burden rests upon the claimant to establish the original trust relationship. Collier on Bankruptcy, *supra*, at ¶541.11.

Whether a trust has been established is a question of state law. *In re B.I. Financial Services Group, Inc.* at 354 (citing *Elliot v. Bumb*, 356 F.2d 749, 753 (9th Cir.), *cert. denied*, 385 U.S. 829, 87 S.Ct. 67, 17 L.Ed.2d 66 (1966)). Under Florida law, it must appear from the

entire transaction that the parties intended that one should hold legal title with the beneficial and equitable ownership to be held by another. *In re Gulfshore Development Corp.*, 144 B.R. 905, 907 (Bkrcty.M.D.Fla. 1992). A resulting trust arises when the legal estate in property is disposed of, conveyed or transferred, but the intent appears or is inferred from the terms of the disposition, or from accompanying facts and circumstances, that the beneficial interest is not to go to or be enjoyed with legal title. *Id.* A trust is implied or results in favor of the person whom equity deems to be the real owner. *Id.*

The Debtor has satisfied her burden of proving the original trust relationship. Francis Lancon received the funds prior to his marriage to the Debtor and held them in his name up until his incarceration. The funds were transferred into the Debtor's name upon Mr. Lancon's incarceration and the evidence established the intent of both Mr. Lancon and the Debtor was that the Debtor would hold the funds in trust until Mr. Lancon's release from prison. The Debtor never used the funds for her own use and never intended to maintain an ownership interest. A resulting trust was created under Florida law.

The Debtor did not own an equitable interest in the funds at the time she filed her bankruptcy petition and the funds are not includable in the bankruptcy estate. Trustee's Motion for Turnover of Property of the Estate is due to be denied.

Dated this 20th day of February, 2001.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge